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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,163	08/04/2005	Arthur J. Roth	03752.400200.	9165
5514 7590 09/11/2008 FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				
EXAMINER				
COLE, ELIZABETH M				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
09/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/511,163

Applicant(s)

ROTH ET AL.

Examiner

Elizabeth M. Cole

Art Unit

1794

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 9/8/08 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 68-85,88 and 120-124.
Claim(s) withdrawn from consideration: 125.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because: With regard to the restriction requirement, Applicant argues that it is improper to imply an order of steps where the order is not specifically recited. However, the claims themselves recite folding, depositing and further folding into a closed sleeve-like configuration, which recites the order of steps, (i.e., further folding into a closed sleeve-like configuration). The order to steps would have to be that the closed sleeve-like configuration is formed after the depositing step in order for the deposited material to be within the sleeve. With regard to the art rejection, Applicant argues that there is no reason to substitute the foam outer layer for a non foam outer layer. However, both Motoi and Stevens are drawn to composite materials which comprise a foam core. While Motoi prefers a foam outer layer for the embodiments set forth at cols.s 27-29, Stevens teaches that similar materials can be formed to have an outer non foam layer. Stevens is drawn to composite materials generally and is not limited to particular end uses. Motoi teaches various end uses, including synthetic wood, rail road ties, pressure bearing board, SEW construction, See col. 40, lines 29-col. 41, line 10 as well as col. 1, lines 15-20, which states that composite materials, which are what Stevens is drawn to, are useful as building materials, structural materials, cross ties and boards for use in watery places). Further, Motoi states that the use of a foamable resin is preferred, not required, See col. 6, lines 11-18, which states that the thermosetting resins used are not particularly limited and can include resins which are foamable. Stevens is not relied on to show that a non foam resin is preferable, but rather as evidence that it was known in the art of composite materials to which both Motoi and Stevens are concerned to use both foam and non foam outer layers in composite materials having a foam core and outer covering in a tube or sleeve-like configuration. The person of ordinary skill in the art would have recognized that non-foam outer layers could have been predictably used instead of the foam outer layer of Motoi as taught by Stevens to arrive at a composite material wherein the the outer layer was not foamed. The person of ordinary skill in the art would have recognized that a resin can be foamed or un-foamed and that the properties such as density, thickness, insulation properties, cushioning properties, etc., will be different. The person of ordinary skill in the art would have recognized that the art of record teaches that both types of foam were known in the art to use as the outer covering layer of a foam core material and would have been able to select either a foamed or non-foamed outer layer depending upon the desired final properties in the finished composite material. With regard to Motoi, Applicant argues that Motoi teaches that the reinforcing layers are on the outside of the intermediate paper layer while in Applicant's invention the cords are laid on at least one side of the web material that, when the web material is formed into a sleeve-like configuration, faces the interior. However, the claims do not preclude an intermediate layer between the core and parallel strands. The parallel strands would still face the interior, even if there is a layer between the parallel strands the matrix.